

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

Plaintiff

vs.

Nadine J. Griffin

Accused Belligerent Claimant

CASE NO. 05-CR-10175-WGY

VERIFIED MOVE TO QUASH  
INDICTMENT FOR VINDICTIVE  
PROSECUTION IN VIOLATION OF THE  
FIFTH AND FOURTEENTH AMENDMENTS,  
OR IN THE ALTERNATIVE, PROVIDE  
EVIDENCE OF LAW PLAINTIFF  
IS NOT REQUIRED TO EXHAUST  
THEIR ADMINISTRATIVE REMEDIES  
BEFORE PETITIONING THE COURT

Fed.R.Crim.P. 12(b)(2)

(Oral Argument Requested)

COMES NOW, Nadine J. Griffin, the accused Belligerent Claimant, proceeding on her own behalf, and moves this Court quash with prejudice indictment number 05-CR-10175 for the reason that prosecutor Christopher Maietta was motivated to bring a two-count felony indictment for reasons of political vindictiveness and by his personal animus against defendant Nadine J. Griffin. Facts in evidence conclude that:

1. Assistant United States Attorney Christopher Maietta was at all times prior to bringing this criminal action aware that an assessment of Nadine J. Griffin's alleged substantial understatement of liability has never been made.

2. That at all times United States Attorney Christopher Maietta and others, deliberately mislead the Grand Jury as well, by failing to inform them that – although they are seeking criminal prosecution against Nadine J. Griffin – they have not and did not exhausted their administrative remedy which statutorily commands: (1) making an assessment as required by law, (2) sending a notice and demand for tax, and (3) attempting to collect the tax.

3. That at all times United States Attorney Christopher Maietta was seeking Nadine J. Griffin to waive all of her constitutionally protected rights and sign a “PLEA AGREEMENT” under threat, duress, intimidation and coercion; just as Daniel Andersen signed on July 15, 2004, Margo Jordan signed on February 28, 2003, Jeffrey Szuch signed on February 27, 2003, and Shoshana B. Szuch signed on February 27, 2003.

4. That at all times United States Attorney Christopher Maietta and others, deliberately mislead the Grand Jury as it appears that the indictment was drafted before it was submitted to the grand Jury; i.e., there was no investigation, independent of the prosecutor.

#### **BRIEF AND MEMORANDUM OF THE LAW IN SUPPORT**

“A vindictive prosecution, if proved, violates a defendant's Fifth Amendment right to due process.” U.S. v. Lanoue, 137 F.3d 656 (1st Cir. 1998) quoting See U.S. v. Goodwin, 457 U.S. 368, 372 (1982). We will reverse a conviction that is the result of a vindictive prosecution where the facts show an actual vindictiveness or a sufficient likelihood of vindictiveness to warrant such a presumption. See *id.* at 373; U.S. v. Marrapese, 826 F.2d 145, 147 (1st Cir. 1987).

If the defendant creates a presumption of vindictiveness the burden shifts to the government to show that legitimate reasons exist for the prosecution. See Goodwin, *id.* 376 n. 8. Successful assertions of vindictive prosecution are most common where a defendant advances some

1 procedural or constitutional right and is then punished for doing so. See Blackledge v. Perry, 417  
2 U.S. 21, 28-9 (1974)

3 In approximately February, 2003 or shortly thereafter, Nadine J. Griffin chose to exercise her  
4 constitutionally protected Right under the Fifth Amendment not to enter into a plea agreement  
5 prior to possible charged with a violation of the internal revenue laws for which she did not  
6 believe she was guilty. Griffin's refusal to deal resulted in Maietta's inducement of a grand jury;  
7 but, failing to fully disclose the facts of the *prima facie* case. These charges are vindictive and  
8 brought in bad faith for the following reasons: (a) Maietta mislead the Grand Jury and failed to  
9 disclose that agents of the IRS never attempted to exhaust the administrative remedies as  
10 required by Acts of Congress and codified within the Internal Revenue Code to collect the  
11 alleged substantial understatement of liability for the tax years 1998 and 1999 in failing to: (1)  
12 "Assess a Liability," (2) issue a "Notice and Demand" for tax, (3) issue a "Notice of  
13 Deficiency," (4) issue a "Notice of Determination" and (5) never once statutorily noticed the  
14 Accused Nadine J. Griffin of their presumptive determination as the law commands.  
15

16 In a further display of his vindictiveness, Maietta did know or should have known that  
17 employees of the IRS, acting in bad faith – waited approximately Six (6) years before bringing  
18 these allegations against Griffin and never once notified her or attempted to collect the alleged  
19 substantial understatement of liability anytime during this lapse of time to present. Had  
20 employees of the IRS exhausted the administrative process as prescribed by Acts of Congress in  
21 the same manner they do with million of taxpayers annually, of the 4,641 plus discovery  
22 documents provided by Maietta, these papers would have been included but they were not.  
23

24 To demonstrate vindictive prosecution, a defendant must either cite direct evidence of a  
25 vindictive motive or establish a presumption of vindictiveness. United States v. Goodwin, 457

1 U.S. 368, 380-81, 73 L.Ed.2d 74, 102 S.Ct. 2485 (1982); United States v. Sinigaglio, 942 F.2d  
2 581, 584 (9th Cir. 1991). A showing of actual vindictiveness requires "direct evidence of an  
3 expressed hostility or threat to the defendant for having exercised a constitutional right." United  
4 States v. Gallegos-Curiel, 681 F.2d 1164, 1168 (9th Cir. 1982).

5 To further evidence of his vindictiveness, Maietta's indictment violates the most  
6 fundamental rights of the equal protection of the law clause of the Fourteenth Amendment. This  
7 violation comes in the form of *selective prosecution* wherein millions of taxpayers each year  
8 substantially understate their alleged liability – are given an administrative notice and an  
9 opportunity to challenge the validity of the presumption pursuant to the internal revenue laws.  
10 Here, these similarly situated taxpayers are not charged with an infamous crime, but  
11 administratively notice by the IRS of their determination that they believed said taxpayer  
12 substantially understated their alleged liability. In proceeding without criminal prosecution, the  
13 IRS begins exhausting the administrative remedies assessing what they believe to be the correct  
14 amount of tax including interest and penalties; demanding for payment and collections of the  
15 same.  
16

17 In a summary of case opinions employees of the IRS exhausted their administrative  
18 remedies against taxpayers by noticing, demanding the tax, assessing and collecting  
19 administratively for an alleged substantial understatement of a federal tax liability.  
20

21 In Mauerman v. C.I.R., 22 F.3d 1001 (10th Cir. 1994), we addressed whether the  
22 tax court correctly upheld the I.R.S.'s *decision to impose penalties against a*  
23 *taxpayer for substantial understatement of tax*. There we held that our standard  
24 of review was for abuse of discretion. Mauerman, 22 F.3d at 1004. However, in  
25 Mauerman the court was examining penalties imposed against taxpayers under  
I.R.C. § 6661 (repealed 1989). Section 6661 detailed that "[t]he Secretary may  
waive all or part of the addition to tax provided by [*the substantial*  
*understatement of liability*] section on a showing by the taxpayer that there was  
reasonable cause for the understatement (or part thereof) and that the taxpayer  
acted in good faith." I.R.C. § 6661(c) (repealed 1989) (emphasis added). Our



1 court, as well as others, interpreted this section to vest with the I.R.S. the  
 2 discretion as to whether to waive penalties against a taxpayer for the  
 3 understatement of tax liability. See Stanford v. C.I.R., 152 F.3d 450, 460 n. 17  
 4 (5th Cir. 1998); Mauerman, 22 F.3d at 1004; Karr v. C.I.R., 924 F.2d 1018, 1025-  
 26 (11th Cir. 1991); Mailman v. C.I.R., 91 T.C. 1079, 1084-85, 1988 WL  
 133255(1988). United State v. Shanbaum, 10 F.3d 305 (5th Cir. 1994) Estate of  
True v. C.I.R., 390 F.3d 1210 (10th Cir. 2004)

5 In the above case citations, these taxpayers were served notice to petition the United States  
 6 Tax Court protesting the issue of a substantial understatement of a federal income tax liability.  
 7 Issuance of the deficiency notice concludes the IRS made a preliminary assessment of liability  
 8 and after such assessment caused a statutory "Notice of Deficiency" to issues under 26 U.S.C. §  
 9 6212, giving the taxpayer 90 days from the date of the notice to petition tax court before other  
 10 collections action is taken. No such exhaustion of the administrative remedy has ever come to  
 11 fruition for Nadine J. Griffin.  
 12

13 To assert the defense of selective or vindictive prosecution, the defendant must establish two  
 14 elements: (1) that others similarly situated have not been prosecuted; and, (2) that the allegedly  
 15 discriminatory prosecution was based on an impermissible motive. Seven Star, Inc. v. United  
 16 States, 933 F.2d 791, 793 (9th Cir. 1991); United States v. One 1985 Mercedes, 917 F.2d 415,  
 17 420 (9th Cir. 1990);

18 Assistant United States Attorney Christopher Maietta of the Tax Division, did know or should  
 19 have known there is no statute within the Internal Revenue Code that permits the IRS to bypass  
 20 the administrative process prior to petitioning a court of the United States for possible civil or  
 21 criminal violations of the internal revenue laws. To the contrary, the abuse of process by  
 22 employees of the IRS became so egregious, Congress was forced to pass the IRS Restructuring  
 23 and Reform Act of 1998 which did very little to curtail their appetite for abuse.  
 24

25 There can be no question that Nadine J. Griffin is a subject of selective prosecution in this  
 instant case. Christopher Maietta did know or should have known having made no attempt, after

1 more than Six (6) years, failing to collect the tax through Congressionally mandated *proviso*  
2 affording to each taxpayer equal protection of the law - violates constitutional due process and  
3 the equal protection of the law Rights of Nadine J. Griffin. No good-faith effort can be shown on  
4 the record to sufficiently establish that agents, officers or employees of the Internal Revenue  
5 Service ever attempted to exhaust the administrative remedies prior to petitioning the Court for a  
6 criminal indictment against Nadine J. Griffin.

7  
8 In the case of the accused Nadine J. Griffin, no attempt to collect the alleged substantially  
9 understated tax liability or any tax has ever been made prior to Assistant United States Attorney  
10 Christopher Maietta petitioning the grand jury. In a plethora of cases, prior to the government  
11 seeking charges for alleged violation of the internal revenue laws are cited in many circuits and  
12 the Supreme Court conclusively establishing that Acts of Congress command the exhaustion of  
13 the administrative remedy before petitioning a district court of the United States: as such was not  
14 done in Nadine J. Griffin's case.

15 "When Congress passes an Act empowering administrative agencies to carry on  
16 governmental activities, the power of those agencies is circumscribed by the authority granted."  
17 Lujan v. Defenders of Wildlife, 504 U.S. 555, 577 (1992), citing Stark v. Wickard, 321 U.S. 188,  
18 309-310 (1944). An agency action that is "arbitrary, capricious, an abuse of discretion, or not in  
19 accordance with law, as well as action taken 'without observance of procedure required by law'"  
20 should be invalidated. United States v. Caceres, 440 U.S. 741, 753-754 (1979).

21  
22 The courts have previously stated that: "the task of safeguarding the rights of criminal  
23 defendants ultimately rests with the experienced men and women who preside in our district  
24 courts." United States v. Balough, 820 F.2d 1485, 1491 (9th Cir 1987). District Judges are well  
25 situated to observe possible discrimination in the government's charging decisions. They have

1 direct experience with the policies and practices of the United States Attorneys in their districts  
 2 and have the opportunity to discern patterns of discrimination. See United States v. Redondo-  
 3 Lemos, 955 F.2d 1296, 1298, 1302 (9th Cir. 1992).

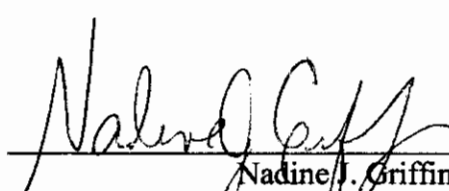
4 WHEREFORE; the accused Nadine J. Griffin moves this Court quash with prejudice  
 5 Counts 1 and 2 of indictment number 05-CR-10175 or, in the alternative, command Christopher  
 6 Maietta provide evidence sufficient to establish that he is not subject to or bound by the  
 7 Constitution for the United State of America, United States Supreme Court Precedent, Act of  
 8 Congress nor the internal revenue laws requiring him to exhaust administrative procedures  
 9 before proceeding on behalf of the United States as prosecutor in a criminal action.  
 10

11 Solemnly submitted,

12 **VERIFICATION**

13 I, Nadine J. Griffin, declare under penalty of perjury as a Conscious, Thinking, Feeling,  
 14 Living, Breathing, Flesh and Blood Sentient Being that the foregoing is true and correct. All  
 15 Rights retained without recourse.

16 Executed this 28 day of February, 2006.

17  
 18 Signature: 

19 Nadine J. Griffin  
 20 Accused, Belligerent Claimant  
 21 c/o 36 Center Street, #143  
 22 Wolfeboro, New Hampshire [03894]  
 23  
 24  
 25

**CERTIFICATE OF SERVICE**

I, Nadine J. Griffin, certify that on this \_\_\_\_ day of February, 2006, I served a true and correct copy of the above VERIFIED MOVE TO QUASH FOR VINDICTIVE PROSECUTION IN VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENTS, OR IN THE ALTERNATIVE PROVIDE EVIDENCE OF LAW PLAINTIFF IS NOT REQUIRED TO EXHAUST THEIR ADMINISTRATIVE REMEDIES BEFORE PETITIONING THE COURT by depositing it in the U.S. Mail, first class postage prepaid, addressed to:

Christopher Maietta  
U.S. Dept. of Justice, Tax Division  
601 "D" Street, NW, Room 7012  
Washington, DC 20004  
Certified Mail No \_\_\_\_\_

William Smith, Majority Chief Counsel  
Preet Bharara, Minority Chief Counsel  
US Committee on the Judiciary  
Subcommittee Administrative Oversight/Courts  
224 Dirksen Senate Office Building  
Washington, D.C. 20510  
Certified Mail No \_\_\_\_\_